

Councillor Gift Policy

Policy – CP095

| Prepared | Reviewed | Approved | Date | Council Minute No. |
|--|----------|-----------------------------------|---------------|--------------------|
| Manager Corporate Administration | ELT | Council | 24 March 2021 | 2021/0054 |
| EDMS File: 18/02/01 | | To be reviewed: March 2024 | | |
| Document Owner: General Manager Corporate | | Review Frequency: 3 years | | |

1. The purpose of this policy is

To provide clear guidance to Councillors in relation to the declaration of gifts, or other benefits such as hospitality which may be offered to them as part of their official duties.

2. Policy Statement

This policy seeks to support Councillors avoid conflicts of interest and maintain high levels of integrity by:

- Providing a transparent and accountable process for managing the receipt or offer of gifts, benefits or hospitality.
- Ensuring that the activities of Councillors are conducted professionally and are not influenced, or perceived to be influenced, by the receipt or offer of a gift, benefit or hospitality.
- Providing clear guidelines to ensure that Councillors are not compromised in the performance of their duties by accepting gifts or benefits.
- Ensuring that any gifts, whether accepted or declined are properly disclosed and recorded.

3. Principles

3.1 Anonymous Gifts

Under the *Local Government Act 2020* (the Act), it is an offence for a Councillor to accept, directly or indirectly, a gift for the benefit of the Councillor equal to or exceeding the gift disclosure threshold (currently \$500), unless:

- a) the name and address of the person making the gift are known to the Councillor; or
- b) at the time when the gift is made:
 - i) the Councillor is given the name and address of the person making the gift; and
 - ii) the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.

A Councillor is not in breach of this requirement if the anonymous gift is disposed of to the Council within 30 days of the gift being received.

3.2 Gifts Must Never be Sought

Councillors must not solicit, demand or request gifts or any personal benefit for themselves or another person by virtue of their position.

3.3 No Sense of Obligation

Councillors should feel no sense of obligation to accept a gift if offered.

Gifts should not be accepted that could influence, or be perceived to influence, a Councillor in the performance of their public or professional duties.

3.4 Prohibited Gifts

In addition to other limitations imposed by this policy, monetary gifts of any value must never be accepted. This includes cash, gift cards and vouchers.

All offers of this nature should be politely declined, and declared in accordance with section 4.1.

3.5 Token Gifts

Gifts of token value may be accepted by Councillors provided that the gift does not create a real or perceived sense of obligation that may lead to a perception of preferential service as a result of the gift.

The following should be used as a guide for Councillors in determining whether to accept token gifts. Such gifts may be accepted only when the following have been considered:

- such a gift is offered in an open or public forum and refusal would be obviously discourteous;
- acceptance would not cause any potential perceived or actual compromise or conflict of interest;
- the gift does not have a significant monetary value (as a guide, less than \$20); and
- the gift is not offered on a regular basis.

There is no requirement to declare or record token gifts in the Council Gifts Register.

3.6 Official Gifts

Councillors may be involved in conferences or social, cultural, community, industry events where gifts of goodwill or official gifts are presented or exchanged. Where it would appear to be impolite or inappropriate to decline the offer, it is reasonable for Councillors to accept official gifts on behalf of Council.

Unless otherwise determined by the Chief Executive Officer, such gifts shall be considered to be the property of Council and may be displayed in an appropriate and secure location for public viewing.

In some circumstances, including where the item may not be suitable for public display, or the gift is of a personal nature to the recipient, the Chief Executive Officer will use their discretion as to the appropriate use of the official gift.

All Official gifts (excluding token gifts), regardless of value, must be declared and the details recorded in the Council Gifts Register. The Council Gifts Register will also record if the gift is used for purposes other than Council purposes.

3.7 Significant Occasion Gifts

A Councillor may accept a significant occasion gift on behalf of Mildura Rural City Council.

A significant occasion gift to the Mayor must not exceed \$500. A significant occasion gift to a Councillor must not exceed \$250.

All significant occasion gifts, regardless of value, must be declared in accordance with section 4.1 and the details recorded in the Council Gifts Register. The Council Gifts Register will also record if the gift is used for purposes other than Council purposes.

3.8 Gifts of Appreciation

Demonstrating appreciation for services received from Council should not involve the presentation of a gift or benefit. Acceptable alternatives may include a letter of thanks or a thank you card, as these are considered less likely to result in a situation that may compromise or be perceived to compromise either party.

If such a gift is offered in an open or public forum and refusal would be obviously discourteous or acceptance would cause any potential perceived or actual compromise or conflict of interest, the gift may be accepted but is to be surrendered to the Chief Executive Officer for a decision as to the appropriate disposal.

Multiple gifts from the same person/organisation are considered inappropriate and should not be accepted.

Gifts of appreciation, whether accepted or declined, are to be declared in accordance with section 4.1 and recorded in the Council Gifts Register.

3.9 Hospitality & Other Benefits

Councillors, when acting in an official capacity, will from time to time receive invitations of hospitality to attend various functions and events, or offers of other benefits such as travel or accommodation. Where hospitality is only modest in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations.

Reasonable hospitality may be accepted in circumstances where it is:

- approved by the Chief Executive Officer;
- provided at a function or event where the person is acting in an official capacity on behalf of Council;
- provided at rates that are openly available to other people; or
- valued at less than \$20 and by reason of its triviality could not be construed as a material conflict of interest.

If acceptance of the hospitality or other benefit is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor, or could be perceived as a conflict of interest, the offer should be politely declined.

Incidental refreshments at meetings, working lunches, or similar, are not considered to be a gift and need not be recorded unless they occur at a frequency that may give rise to the perception of a conflict of interest under the Act.

Offers of hospitality (excluding incidental refreshments) or other benefits, whether accepted or declined, must be declared in accordance with section 4.1 and recorded in the Council Gifts Register.

3.10 Awards, Prizes and Raffles Won at Conferences/Seminars

Councillors attending functions in an official capacity and at Council's expense, lose entitlement to any award, prize or raffle won as a result of attending the function.

All prizes or awards valued at over \$20 that are won at functions attended at Council's expense, must be declared and surrendered in accordance with section 4.1.

3.11 Remote or Insignificant Interest

If the acceptance of a gift, hospitality or other benefit relates to an interest that is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the Councillor, the Councillor will not be considered to have a conflict of interest.

3.12 Personal Interests Returns

Personal interests returns are required to be lodged periodically by Councillors declaring the matters as prescribed by the *Local Government (Governance and Integrity) Regulations 2020*.

This includes the details of any gift received that equals or exceeds \$500 in value, including gifts in the form of goods or services, and multiple gifts that together equal or exceed \$500 in value received at any time since the preceding return was lodged, (but excluding gifts received from family members).

3.13 Campaign Donation Returns

Section 309 of the Act outlines the requirements in relation to Campaign Donation Returns, and when certain gifts are not to be accepted.

It is unlawful for a candidate or a person acting on behalf of a candidate to receive during the donation period a gift made to or for the benefit of the candidate, being a gift the amount or value of which is equal to or exceeds the gift disclosure threshold unless:

- (a) the name and address of the person making the gift are known to the person receiving the gift; or
- (b) at the time when the gift is made-
 - (i) the person making the gift gives to the person receiving the gift the person's name and address; and
 - (ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

3.14 Conflict of Interest

When deciding whether to accept an offer, Councillors should first consider if the offer could be perceived as influencing them in performing their duties.

Councillors should consider the GIFT test at Figure 1 and the information below to help decide whether to refuse an offer.

Councillors should refuse offers:

- likely to influence them, or be perceived to influence them, in the course of their duties or that raise an actual, potential or perceived conflict of interest;
- that could bring them or Council into disrepute;
- made by a person or organisation about which they will likely make or influence a decision (this also applies to processes involving grants, sponsorship, regulation, enforcement or licensing), particularly offers:
 - made by a current or prospective supplier;
 - made during a procurement or tender process by a person or organisation involved in the process;
 - likely to be a bribe or inducement to make a decision or act in a particular way;
 - that extend to their relatives or friends;
 - of money, or used in a similar way to money, or something easily converted to money;
 - where, in relation to hospitality and events, the organisation will already be sufficiently represented to meet its business needs;
 - where acceptance could be perceived as endorsement of a product or service, or acceptance would unfairly advantage the sponsor in future procurement decisions;
 - made by a person or organisation with a primary purpose to lobby Council; or
 - made in secret.

If a Councillor considers they have been offered a bribe or inducement, the offer must be reported to the Chief Executive Officer who will determine what action, if any, should be taken.

3.15 The GIFT Test

Developed by the Victorian State Services Commission, the GIFT test is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality.

Figure 1

| | | |
|----------|------------------|--|
| G | Giver | <p>Who is providing the gift, benefit or hospitality and what is their relationship to me?</p> <p>Could the person or organisation benefit from a decision I make?</p> |
| I | Influence | <p>Are they seeking to influence my decisions or actions?</p> <p>Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy, a token of appreciation or highly valuable? Does its timing coincide with a decision I am about to make?</p> |
| F | Favour | <p>Are they seeking a favour in return for the gift, benefit or hospitality?</p> <p>Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers of the last 12 months? Would accepting it create an obligation to return a favour?</p> |
| T | Trust | <p>Would accepting the gift, benefit or hospitality diminish public trust?</p> <p>How would I feel if the gift, benefit or hospitality became public knowledge? What would my colleagues, family friends or associates think?</p> |

4. PROCEDURES

| Offer | Value | Action |
|--|------------|---------------------|
| Token Gifts | Under \$20 | Nil |
| Any Gift, Hospitality, Benefit, Award or Prize | Over \$20 | Surrender & Declare |
| Cash or Gift Card | Any Value | Decline & Declare |
| Official or Significant Occasion Gifts | Any Value | Surrender & Declare |

4.1 Declaration of Gifts

Any gift, benefit, award or prize over \$20, whether accepted or declined, must be declared by completing a 'Declaration of Gifts' form and submitted to the Chief Executive Officer. The details will be recorded on the Council Gifts Register which is administered by the Governance & Risk Unit.

Surrendered gifts immediately become 'public property' and will be disposed of in accordance with the 'Disposal of Gifts' process as set out below.

A gift declined must also be disclosed. Disclosure that the gift has been declined and returned protects the Councillor and highlights any systematic patterns.

4.2 Disposal of Gifts

The Chief Executive Officer may dispose of gifts by any of the following methods:

- Return to the original recipient;
- Sold to the original recipient (where an offer to purchase is received);
- Return to sender;
- Disposal by resolution of Council;
- Transfer to other public agencies or authorities;
- Transfer as a gift to a recognised charitable, aid or non-profit organisation;
- Archival action by the Victorian Museum or State Library;
- Reduction to scrap;
- Destruction;
- Any other appropriate method as determined by CEO.

If a gift does not have a public value or is not of particular significance regarding its historical, cultural or protocol value, or was given to a Councillor by virtue of the discharge of their official duties, the recipient may, at the discretion of the Chief Executive Officer, buy the gift from Council. The purchase price must be the manufacturer's wholesale value of the gift in the place of origin at the time of purchase as determined by the Chief Executive Officer, less \$50. If there is difficulty in assessing the value, a valuation must be obtained by Council from an appropriately experienced person or body.

5. Who is responsible for implementing this policy?

General Manager Corporate.

6. Definitions

| | |
|-------------------------------|---|
| <i>Affected Person</i> | means: <ul style="list-style-type: none">a) The relevant person (Councillor);b) A family member of the Councillor;c) A body corporate of which the Councillor or their spouse or domestic partner is a Director or a member of the governing body;d) An employer of the Councillor, unless the employer is a public body;e) A business partner of the Councillor; |
|-------------------------------|---|

| | |
|----------------------------------|--|
| | <p>f) A person for whom the Councillors is a consultant, contractor or agent;</p> <p>g) A beneficiary under a trust or an object of a discretionary trust of which the Councillor is a trustee;</p> <p>h) A person from whom the relevant person has received a disclosable gift</p> |
| Benefit | means something which is believed to be of value to the receiver, such as a service (ie access to a sporting event, preferential treatment, access to confidential information, accommodation, personal services, pleasure or holidays) |
| Bribe | means a corrupt inducement to reward |
| Disclosable Gift | <p>means one or more gifts with a total value of, or more than, \$500 (or other prescribed amount), received from a person in the 5 years preceding the decision on the matter-</p> <p>a) <i>If the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received;</i> or</p> <p>b) <i>If the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation</i></p> <p>but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee</p> |
| Gift | <p>means any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including –</p> <p>a) <i>the provision of a service (other than volunteer labour); and</i></p> <p>b) <i>the payment of an amount in respect of a guarantee; and</i></p> <p>c) <i>the making of a payment or contribution at a fundraising function</i></p> |
| Gift Disclosure Threshold | means \$500 or a higher amount or value prescribed by the regulations and notwithstanding the limits specified in this policy |
| Hospitality | means where a meal or service is offered which has more than nominal value and is not viewed as being connected to official Council business or part of the accepted meal at a conference or seminar |
| Official Gift | means a gift received by a Councillor as a representative of the City or Council. These gifts may be received from a Sister City, organisations or corporations that are bestowing a corporate gift (eg plaques, plates, vases, trophies, art work) or souvenir to the City, or as a token of appreciation for a contribution to a conference or industry event |

| | |
|-----------------------------------|--|
| Personal Interests Returns | means the returns completed by Councillors to declare any interests they may have (eg property owned, gifts over \$500 received) as required by the <i>Local Government Act 2020</i> . |
| Prohibited Gift | means monetary gifts of any value including: cash, credit, gift cards, vouchers |
| Significant Occasion Gift | means a gift, which may be given to the Mayor or a Councillor as a gesture of goodwill for official or ceremonial purposes |
| Token Gift | means a gift, benefit or hospitality that is of inconsequential or trivial value (under \$20), to both the person making the offer and the recipient (such as basic courtesy), and could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter. A token gift should not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of their official duties. In the event that a gift might reasonably be perceived to influence, or appear to influence, the recipient, it cannot be defined as a token gift |

7. Legislation and other references

7.1 Legislation

Local Government Act 2020

Local Government (Governance and Integrity) Regulations 2020

7.2 Documents

Councillor Code of Conduct

Governance Rules

Conflict of Interest Policy CP057

Declaration of Official Gifts Form

8. Risk Assessment Reference

Please tick the corporate risk(s) that this policy is addressing.

| Risk Category | ✓ | Risk Category | ✓ |
|----------------------------------|---|-------------------------------------|---|
| Asset Management | | Financial Sustainability | |
| Committees | | Human Resource Management | ✓ |
| Compliance – Legal & Regulatory | ✓ | Leadership & Organisational Culture | |
| Contract Management | | Occupational Health & Safety | |
| Contract Tendering & Procurement | | Organisational Risk Management | |
| Corporate Governance | ✓ | Project Management | |
| Environmental Sustainability | | Public Image and Reputation | ✓ |



Mildura Rural City Council

DECLARATION OF OFFICIAL GIFTS

by Councillors of Mildura Rural City Council

| Councillor to complete | |
|--|--|
| Declaration Date: | |
| Name: | |
| | |
| | |
| Full Description of Gift: | |
| Gift Received From: | |
| Date Gift Offered: | |
| Value of Gift: | |
| Has the gift been independently valued by an appropriately experienced person or body? | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Name of Person/Body valuing gift: | |
| Do you wish to purchase the gift? | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| If yes, please state your purchase offer: | |
| Was the gift handed to the CEO? | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Is yes, date gift surrendered: | |

Signature: _____

Date: _____

OFFICE USE ONLY

Gift disposed of as follows:

- | | |
|---|--|
| <input type="checkbox"/> Returned to original recipient | <input type="checkbox"/> Transfer as a gift to a recognized charitable, aid or non-profit organisation |
| <input type="checkbox"/> Purchased by original recipient | <input type="checkbox"/> Archival action by the Victorian Museum or State Library |
| <input type="checkbox"/> Returned to sender | <input type="checkbox"/> Destruction |
| <input type="checkbox"/> Disposal by resolution of Council | <input type="checkbox"/> Other: Specify |
| <input type="checkbox"/> Transfer to other public agencies or authorities | |

CEO Signature:

Date: